

**STATE OF NORTH CAROLINA
COUNTY OF AVERY**

The Avery County Board of Commissioners met in Regular Session on Monday, January 5, 2009 in the Commissioners Boardroom, Avery County Administrative Complex, Newland, NC.

Members Present: Kenny Poteat, Chairman; Phyllis Forbes Vice-Chairman; Scott Heath; Martha Hicks; Glenn Johnson.

Members Absent: None

Call To Order

Chairman Poteat called the meeting to order at 3:35 p.m.
Glenn Johnson led prayer.

Proclamations and Awards- Sheriff Kevin Frye

Sheriff Kevin Frye explained to the Board that he had come to present a very distinguished award that very few law enforcement officers stay in the business long enough or have the ability to achieve. The award is the Advanced Law Enforcement Certification and it is through the North Carolina Department of Justice Education Standards Commission. Sheriff Frye said Deputy Lee Buchanan has met the standards laid out to achieve this award. Sheriff Frye stated that since he had been Sheriff he had stressed training to his employees. Deputy Buchanan is to be commended in making the efforts that he has to improve himself and the Sheriff's Department, said Sheriff Frye. Sheriff Frye reported that within the past year Deputy Buchanan has received his general instructor certification and specialized in physical fitness requirements and Deputy Buchanan has also attended civil process training and other areas of law enforcement training and assists in the internal training at the Sheriff's Office which is much more cost effective. Sheriff Frye explained the qualifications that it takes to get the Advanced Law Enforcement Certificate. Sheriff Frye read aloud the Certificate and presented Deputy William Lee Buchanan with the Advanced Law Enforcement Certificate. Sheriff Frye stated that he was extremely proud of his officers at the Avery County Sheriff's Department.

Public Comments

There were no public comments.

Chairman Poteat wished everyone a happy new year and stated he hoped it would be a wonderful year for Avery County.

Board Appointments

Smoky Mountain Center Board

The County Manager, Robert Wiseman, advised that Smoky Mountain Center Board required an elected official be on this board and that Mr. Glenn Johnson had agreed to serve on this board. Chairman Poteat stated that this was a very valuable board and that it was a management team that Mr. Johnson would be working with. The County Manager reported that this board met places such as West Jefferson, Wilkesboro, Asheville, etc.

Motion by Phyllis Forbes and second by Scott Heath to appoint Mr. Glenn Johnson to serve on the Smoky Mountain Center Board. Motion unanimous with those eligible to vote (4-0).

Avery County Council on Aging

Martha Hicks has agreed to serve on this board after Dan South's resignation. The County Manager stated that he believed we could not find anyone better to serve on the board because of Ms. Hick's dedication and devotion to the seniors in Avery County.

Martha Hicks stated that it would be a great honor to work with this board.

Motion by Glenn Johnson and second by Scott Heath to appoint Martha Hicks to the Avery County Council on Aging Board. Motion unanimous with those eligible to vote (4-0).

High Country Workforce Development Board

Ms. Susan Pittman served on this board as a member of the private sector and because of personal commitments she is unable to continue to serve. The County Manager stated that this did not have to be an elected official appointment. The County Manager advised that Sallie Woodring, Director of Volunteer Services for Appalachian Regional Healthcare, has expressed interest in serving on this board.

Motion by Phyllis Forbes and second by Martha Hicks to appoint Sallie Woodring to the High Country Workforce Development Board. Motion unanimously approved.

Future Forward Economic Alliance

The County Manager stated that Future Forward Economic Alliance is a 12 county planning board that identifies a set of strategies to help with promoting economic development in each county. The County is

represented by Tommy Burleson and Mr. Glenn Johnson has agreed to serve on this board which meets quarterly.

Motion by Scott Heath and second by Phyllis Forbes to appoint Glenn Johnson to the Future Forward Economic Alliance Board. Motion unanimous with those eligible to vote (4-0).

Rural Transportation Advisory Committee

The County Manager advised that due to Dan South's resignation, an elected official needed to be appointed for this board. This committee is regional in nature and this committee reviews proposed projects across the 7 county area for major as well as secondary roads and it is a step between the elected boards and the Department of Transportation so that the County has an input into the planning process.

Motion by Phyllis Forbes and second by Martha Hicks to appoint Mr. Glenn Johnson to the Rural Transportation Advisory Committee to fulfill the unexpired term of Dan South through January 2011. Motion unanimous with those eligible to vote (4-0).

Avery County Recreation Committee

Due to Dan South's resignation, there is a vacancy on the Avery County Recreation Committee which needs to be filled by an elected official. Mr. Scott Heath has expressed interest and agreed to serve on this committee.

Motion by Glenn Johnson and second by Martha Hicks to appoint Mr. Scott Heath to the Avery County Recreation Committee. Motion unanimous with those eligible to vote (4-0).

The County Manager stated that the youth sports program was a lot better in Avery County because of the work of the Avery County Recreation Committee.

Avery Smart Start

The County Manager advised that Scott Heath had taken on the responsibility of being a member of the Avery Smart Start Board. The meetings are in the afternoon and Mr. Heath has started a new business and it is very hard to devote his time away from his business to attend the meetings. Ms. Martha Hicks has time during the afternoon to be at the Avery Smart Start Board meeting and has agreed to serve on this board.

Motion by Scott Heath and second by Phyllis Forbes to appoint Martha Hicks to the Avery Smart Start Board. Motion unanimous with those eligible to vote (4-0).

Scott Heath stated that he had not been able to make it to the meetings and that it was a very good board and Sara Yackey done a very good job with Avery Partnership. Mr. Heath thanked Ms. Hicks for being willing to serve on this board.

Economic Development Committee

According to the Economic Development Committee bylaws, there are members that are appointed to three year terms on a rotating basis and there are three members whose terms will expire in January 2009 stated the County Manager. The EDC has requested that all three members be reappointed for the upcoming three year terms: Dempsey Clark; Dennis Aldridge; and Dr. Suzanne Owens. The County Manager stated that currently there was a vacancy on the EDC due to the resignation of Mr. David Rash and Michelle Vance Scott was approved by the EDC to fill this vacancy.

Motion by Phyllis Forbes and second by Glenn Johnson to reappoint Dempsey Clark; Dennis Aldridge and Dr. Suzanne Owens to the Economic Development Committee for a term of three years. Motion unanimously approved.

Motion by Glenn Johnson and second by Martha Hicks to appoint Michelle Vance Scott to the Economic Development Committee. Motion unanimously approved.

NCACC Legislative Liaison

The County Manager advised that there is a requirement from the North Carolina Association of County Commissioners that we include in this January agenda an appointment of a Liaison for the Legislative Biennium. Chairman Poteat stated that he had served in this position in the past and was very willing to continue to do so. Chairman Poteat advised there would be a special kickoff meeting at the Legislative Goals Conference in January.

Motion by Phyllis Forbes and second by Glenn Johnson to appoint Chairman Poteat as the Legislative Liaison for the 2009/2010 legislative biennium. Motion unanimously approved.

Chairman Poteat thanked each one of the board members for their willingness to serve on all the different boards.

Toe River Health District Fee Plan – Jesse Greene

Jesse Greene, Toe River Health District Director, introduced Jim Buckner who is the Chairman of the Toe River Health Board.

Mr. Greene stated that according to the NC General Statutes 130A-39(g) the county health department can charge fees for cost related health department services provided that it is based on a plan recommended by the health director, approved by the Board of Health, and approved by the Board of County Commissioners. Mr. Greene requested that the Board consider approving this fee plan which is itemized fees for the different services that are conducted at the health department and this includes environmental fees as well as human service fees. Mr. Greene stated that this fee plan is for the three counties of the Toe River Health District; Avery, Mitchell and Yancey. Tommy Burleson, Inspections Department, spoke up from the audience and stated that he believed according to the bylaws of the health department that all three counties have to approve this fee plan at a public hearing and the public hearing must be advertised for two weeks. Mr. Greene stated that he was not aware of any public hearing. The County Attorney advised that she was not aware of any need for a public hearing but has not looked at the bylaws of the health department. Chairman Poteat asked the County Attorney, Michaelle Poore, to research whether or not a public hearing was necessary for approval of the fee plan. Mr. Greene stated that he had read the bylaws and that he had no knowledge of a public hearing being needed. Mr. Greene explained that the need for the increase was that the Medicaid rate had increased. Chairman Poteat asked Mr. Greene to supply documentation of what the fee was previously and what the fee will be increased to. Glenn Johnson questioned why Avery County was paying \$310.00 for new private well fees and Mitchell County is paying \$260.00. Mr. Greene answered that Mitchell County approved \$260.00 and asked Toe River Health District to bring data back in 6 months and agreed to fund the difference if the actual costs shows it is more than \$260.00. Phyllis Forbes also stated that Mitchell County has agreed to pay the difference. Chairman Poteat said this is a three way partnership and should share equally. Mr. Greene advised that there was data from all three counties and the data shows that the estimates for the private well fee is approximately \$310.00 and this data will be brought to the Mitchell County Board of Commissioners. Scott Heath stated that the fees should be district wide. Mr. Heath questioned about the 30 cents per square foot for the septic fees and that possibly this is the only district that uses square footage and that every other district's fees are based on bathrooms. Mr. Heath asked Mr. Greene to compare with other health districts how their fee schedule compares with Toe River Health District. Chairman Poteat advised the County Attorney to look into the question whether a public hearing should be held and the approval for the fee plan would be put off until the County Attorney could check into this.

Tax Collector Report – Phillip Barrier

Phillip Barrier, Tax Assessor, presented the Tax Collector's Report in the absence of Mary Daniels. The total tax collected for the month of December was \$4,462,282.45. There has been \$2,000,000 collected Friday and Monday.

Motion by Glenn Johnson and second by Phyllis Forbes to approve the Tax Collector's report as presented. Motion unanimously approved.

Tax Assessor's Report – Phillip Barrier

Real and Personal Releases

Phillip Barrier, Tax Assessor, presented the Real and Personal Releases which will be rebilled to the correct owner. The County Tax Release is \$190.42 and Fire Tax is 20.57.

Motion by Phyllis Forbes and second by Martha Hicks to approve the Real and Personal Releases as presented. Motion unanimously approved.

Motor Vehicle Releases

Mr. Barrier stated that there were several motor vehicle releases and these were from the taxpayers appealing their value with a bill of sale. The County Tax Release was \$194.02, Fire Tax Release \$22.21, and City Tax Release \$15.79.

Chairman Poteat questioned one of the Motor Vehicle Releases. Mr. Barrier stated that the vehicle came through the system as a 2008 but was really a 1978.

Motion by Scott Heath and second by Martha Hicks to approve the Motor Vehicle Releases as presented. Motion unanimously approved.

Special Real Property Release

Mr. Barrier stated that he wanted to do this release separate. This is the County property that was bought from the Wright family and the arrangements were made that the County would pay the taxes and rather than the Finance Officer writing a check to Avery County we ask that it is released. The County Tax Release is \$817.70 and Fire Tax Release is \$88.27.

Motion by Scott Heath and second by Phyllis Forbes to approve the Special Real Property Release as presented. Motion unanimously approved.

Mr. Barrier stated that there were \$19,000,000 sales for the month of December. Chairman Poteat stated that he had done the calculations from August 5 through December 29 and if the Land Transfer Tax was in place it would have generated \$327,521.20 for school construction.

Martha Hicks stated that she appreciated the good job that the Tax Assessor's Office and Tax Collector's Office was doing.

Recess

Chairman Poteat called for a three minute recess.

Chairman Poteat stated that the Board was back in regular session after a brief recess.

County Manager Updates – Robert Wiseman

Rabies Action Team

The County Manager stated that a draft of the Rabies Action Team bylaws had been given to the Board for their review and in the next month asked the Board to review this document and let the County Manager know their thoughts on this document.

Banner Elk Day Care and Puckett Property

The County Manager advised pending no action being taken in the immediate future, both buildings have been winterized. There is an ongoing process right now with the town of Banner Elk investigating what is involved with rezoning the daycare property. The County Manager said there needed to be some direction as to whether we need to advertise the Puckett Property for sale as it has been declared as surplus property. Chairman Poteat questioned if there is a joint meeting with the Board of Education any time soon. The County Manager advised that there is a pending date for January 12, 2009 for a joint meeting with the Board of Education and Board of Commissioners. The County Manager stated that there was a party interested in the Puckett Property. Glenn Johnson advised that he felt that this issue should be tabled until the joint meeting with the Board of Education. Scott Heath stated that there are structures on both of these properties and if the Board sits on these properties for a long time without doing anything the structures would start to deteriorate. Martha Hicks said that she had talked to a couple of the school board members and one of them was going to go and look at the property to see if there was an interest in that property and that she would like to hear the school board's opinion on this property. Ms. Hicks stated she wanted to make sure that the Board didn't sell the property and then it come up that the property was needed later. Chairman Poteat advised that the Board would wait for the joint meeting with the Board of Education and then very soon after that some action needed to be taken.

911 Monument

The County Manager stated that he had talked with Mr. John Hicks to get an idea when the monument for the law officer would be erected and that the 911 Monument would be moved at the same time. The County Manager said that he had not spoken with Mr. Sluder or members of the Fire Association about moving the monument but that he would make sure everyone was in one accord before the move was made.

Land Transfer Tax

The County Manager reported that the election for the Land Transfer Tax is scheduled to be held on February 3, 2009. This is four tenths of 1% of the sale price of the property. The County Manager stated that some educational information had been dispersed. The County Manager advised that an article came out in the newspapers that was generated by the Avery County Property Owner's Against the Transfer Tax and that this was a political action committee with the head of this committee being a gentleman named Bryan Jenkins who lives in Greensboro, North Carolina who owns no property real or personal in Avery County and pays no taxes but is the head of the Avery County Property Owner's Against the Transfer Tax. The County Manager said that the information published in the newspapers was misleading and the "home tax" reference was incorrect. This is not a home tax. Glenn Johnson stated that there have been some calls made from New Mexico. Rachel Deal said that she had received a phone call and that she felt they were fighting against the intelligence of our citizens. Glenn Johnson stated

the people of Avery County didn't need someone outside of the County telling us how to vote. The County Manager advised that the other point of origin is Greensboro which is the home office of the NC Board of Realtors. Chairman Poteat asked the public to educate them about this Land Transfer Tax and to please get out and vote.

Avery Airport Authority – Sam Calvert

Sam Calvert, Chairman of the Avery Airport Authority, thanked the Board of Commissioners for their continued support. He also thanked the Board for advancing the Avery Airport Authority the money for the new AWOS system. Mr. Calvert advised that there is a map of the new property that was given to the Morrison Airfield Foundation which in turn was supposed to have been transferred to the Airport Authority 10-12 years ago and recently they have seen fit to give us the property which is in the amount of 20-25 acres which is outlined in blue on the map given to the Board. Phyllis Forbes questioned if that would require a lot of fill. Mr. Calvert answered that the Avery Airport Authority is working with Unimin to fill this portion of the property. Mr. Calvert advised that the FAA requires a 250 foot zone for safety areas. Mr. Calvert advised that the Avery Airport Authority had two grants; one for \$110,000 that would require 10% addition from the County and one for \$150,000 that would require 10% which would be approximately \$26,000 that the County would have to put into this project. Mr. Calvert stated that this needed to be in addition to this year's budget. Mr. Calvert advised that there was an area that had erosion problems and that all of this could be done at one time. He stated there are six new hangars in construction and there was no room for expansion until this property was received. Chairman Poteat said that the Board had talked in the past about the reluctance of approving a budget amendment in midstream. Chairman Poteat questioned if this requirement needed to be met. Mr. Calvert advised that the airport was grandfathered in at the present time but the FAA stated that at the earliest time that this safety zone needed to be filled in. Scott Heath questioned if there was a time constraint on the two grants. Mr. Calvert answered that the \$110,000 grant runs out in March and that an extension has been requested at this time and that an extension is possible. Chairman Poteat advised that the Board would need to wait for the possible extension and if it is not granted then to seek action but hopefully if the extension was granted to put both of these grants into the upcoming budget year. Chairman Poteat asked Mr. Calvert to keep the Board posted about the extension of the grant and if need be the Board could call a special meeting.

Mr. Calvert reported that there are six new hangars being built and that water, sewer, and drainage was being put in between the new hangars and that the AWOS system was up and operational. Glenn Johnson asked about the Energy Exchange. The County Manager explained that the Energy Exchange is an arm of the Blue Ridge Conservation and Development which is state and federally funded and that this project was introduced to tap into the methane gas at the landfill which would operate several greenhouses but that the gas was too acidic and that the original concept was that the heat generated by the methane would supply heating for the airport. Chairman Poteat asked the County Manager to look into whether the Energy Exchange was still in operation. Chairman Poteat reiterated to Mr. Calvert to let the Board know what the outcome of the grant extension was as soon as possible.

Year End Report – Avery County Sheriff's Department

Sheriff Kevin Frye reported to the Board the year end statistics for the Avery County Sheriff's Department for 2008. The Avery County Sheriff's Office was dispatched to 7,118 calls which equals one call every hour of every day; they recovered \$152,438 in stolen property; served 1011 civil papers; charged 261 felony charges and 726 misdemeanor charges; processed 1,173 inmates through the jail; had 52 people sent to prison; investigated 48 domestic violence cases; and seized \$55,155.00 in drugs. Chairman Poteat stated that the Avery County Sheriff's Department should be commended for the excellent job that they do. Phyllis Forbes and Martha Hicks commended the Avery County Sheriff's Department for the good job that they are doing.

Finance Officer Report – Tim Greene

Budget Amendment # A09-18

Tim Greene, Finance Officer, requested that the undesignated Fund Balance in excess of 20% of the total General Fund Expenditures and transfer to other funds at the end of Fiscal Year 2007-2008 be appropriated to the Capital Reserve Fund.

Motion by Glenn Johnson and second by Martha Hicks to approve the budget amendment to transfer to Capital Reserve Fund (107000.6246) debit of \$3,786,266.00; credit of \$3,786,266.00 to Fund Balance Appropriated (103990.0000); debit of \$3,786,266.00 to Fund Balance Appropriated (463990.0000) ; credit of \$3,786,266.00 to transfer from General Fund (463101.0000). Motion unanimously approved.

The County Manager stated that \$3,000,000 was put in Capital Reserve but that every penny of this money was committed to projects.

Budget Amendment # A09-19

The NC Department of Juvenile Justice and Delinquency Prevention allocated additional monies for the Juvenile Crime Prevention Council Programs (JCPC). The state requires a 30% local match.

Motion by Phyllis Forbes and second by Glenn Johnson to approve the budget amendment Debit of \$1,417.00 to Rainbow Center (107000.6120); Credit of \$1,091.00 to Juvenile Serv-Landship (103491.0000) and credit of \$326.00 to Fund Balance Appropriated (103990.0000). Motion unanimously approved.

Budget Amendment # A09-20

Avery County has approximately \$15,000 remaining on the NC Department of Crime Control and Public Safety Crisis Housing Assistance Funds (CHAF) grant. Boone Housing Authority is the grant administrator. This is 100% reimbursable Grant.

Motion by Scott Heath and second by Martha Hicks to approve the budget amendment Debit of \$15,000.00 to CHAF Grant (104100.7442) and Credit of \$15,000.00 to CHAF Grant (103356.0000). Motion unanimously approved.

Budget Amendment # A09-21

The Avery County Board of Commissioners voted at the September 2, 2008 meeting to transfer the position of Fire Coordinator and the necessary funding to the Fire Commission. Charlie Franklin was hired for this position on October 22, 2008.

Motion by Glenn Johnson and second by Phyllis Forbes to approve the budget amendment; Debit of \$24,644.00 to Transfer to Fire Tax Fund (107000.6243) and Credit of \$20,923.00 for Salary-Secretary (105250.0210), FICA-Administration (105250.0500) \$1600.00, Group Insurance (105250.0700) \$628.00 and 401K Retirement (105250.0800) \$1493.00; Debit of \$24,644.00 to Fire Commission (206600.4012) and Credit of \$24,644.00 to transfer General Fund (203101.0000). Motion unanimously approved.

Budget Amendment # A09-22

The Department of Social Services has received an additional allocation for the Crisis Intervention Program in the amount of \$22,753.00. This is 100% Federal money.

Motion by Martha Hicks and second by Scott Heath to approve the budget amendment Debit of \$22,753.00 to Crisis Intervention (106800.6090) and Credit of \$22,753.00 to County Welfare (103634.0000). Motion unanimously approved.

County Attorney Report –Michaelle Poore

Michaelle Poore, County Attorney, advised she had one matter which required the Board's attention. Ester Manheimer, attorney from The Van Winkle Firm in Asheville was present to represent the developer of The Fall's at Hawk's Crossing. The County Attorney stated that there was a request for variance made at the planning board meeting and with that request for the variance there was a map submitted that showed the road grade and the variance involves the road grades on this property. The map which was submitted indicates that it was for a phased development; Phase I of The Fall's at Hawk's Crossing. The County Attorney said that there has not been a master plan submitted for this subdivision and the initial map that was submitted to the planning board was not a phased subdivision at that time. The County Attorney advised that she is not sure that the Board can consider all of the issues that is involved with a variance on the road whenever the Board is unsure what the future development portions of the property is going to be. She stated that one recommendation that the Board can consider that may be appropriate is to refer this back to the planning board to gather more information and then resubmit to the Commissioner's for the variance request. The County Attorney said that the planning board would be meeting the 26th of January and maybe the issues can be addressed and the Board address this issue again at the February meeting. She explained that there were some other issues with the map that the planning board may not be aware of and there was nothing from the planning board indicating that these issues have been reviewed. The first issue is that the entrance off of the state highway shows a 20% grade and that there is not a certification letter approving that area. The County Attorney stated there are other issues that needed to be looked into which included public health and safety and also two other issues that the planning board needed to address and give their recommendations on are a second water source of fire protection near the top of the mountain and also there is not an engineered set of plans which has been submitted to the Inspection's Department under the seal of an engineer for the change of road grades showing whether or not the support structures such as retaining walls are adequate. The County Attorney advised that this issue needed to be referred back to the planning board to address the criteria that the ordinance sets out specifically. She stated that there are specific things that have to be addressed and these areas have not been addressed by the planning board.

Ester Manheimer, attorney for The Fall's at Hawk's Crossing, stated that at the November planning board meeting that it appeared the final plan was being considered and then the variance came up and the

planning boards action was to approve the variance and that is what is reflected in the minutes. Ms. Manheimer said her clients were very surprised that the application was not considered complete and it needed to go back to the planning board and in reviewing the minutes of the planning board there was concern about what criteria the developers needed to have addressed and that this seems to be something of a moving target. The County Attorney stated that the planning board needed to set the criteria for the variance. Ms. Manheimer advised that the developers thought that the final plan had been submitted and was complete and thought that everything was ready to go and had an onsite meeting with staff in September and was told that the final plan would be ready to go and most likely would be approved. Ms. Manheimer stated that she had never seen a variance request remanded but thought that once a variance request went up it was to either be voted up or down.

Closed Session

Motion by Scott Heath and second by Glenn Johnson to go into Closed Session under G.S. 143-318.11 (a)(3) regarding Attorney/Client Privilege and G.S. 143-318.11 (a)(6) regarding personnel matters at 6:00 p.m. The Board, the County Attorney, the County Manager, the Finance Officer and the Clerk are the invitees. Motion unanimously approved.

The Board came out of Closed Session at 7:00 p.m. The Chairman advised that no vote was taken during Closed Session. The Chairman asked if any Commissioner had any comment. There were no comments.

Motion by Phyllis Forbes and second by Glenn Johnson to give the County Manager, Robert Wiseman, a 4% raise effective December 1, 2008.

Chairman Poteat commended Mr. Wiseman on a job well done. The County Manager stated he was grateful to the Commissioners and to the staff.

Motion unanimously approved.

Approval of Minutes

Motion by Martha Hicks and second by Phyllis Forbes to approve the minutes of the Regular Session November 3, 2008 and Regular Session December 1, 2008. Motion unanimously approved.

Agenda Consent Items

Ms. Forbes stated that she was very pleased to see that NACO in the legislative goals opposed the well fee increase for testing for petroleum byproducts.

Agenda Consent Items adopted by Consensus of the Board.

Upcoming Meetings

The next currently scheduled meeting is February 2, 2009. Chairman Poteat announced that the Board certainly intends to at some point in time more than likely in the month of February to hold a special meeting concerning The Falls at Hawk's Crossing and that time will be determined at a later date.

Motion by Phyllis Forbes and second by Scott Heath to have a joint meeting with the Board of Education January 12, 2009 at 3:30 p.m. Motion unanimously approved.

Motion by Scott Heath and second by Glenn Johnson to adjourn this meeting at 7:14 p.m. Motion unanimously approved.

**Kenny Poteat, Chairman
Avery County Board of Commissioners**

ATTEST: _____
Cindy Turbyfill, Clerk

